

NJ State Prevailing Wage Act & Regulations

Chapter 11 WAGES ON PUBLIC WORKS

34:11-56.25. Public policy

It is declared to be the public policy of this State to establish a prevailing wage level for workmen engaged in public works in order to safeguard their efficiency and general well being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to efficiency and well-being.

34:11-56.26. Definitions

As used in this act:

- (1) "Department" means the Department of Labor of the State of New Jersey.
- (2) "Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workers in such craft or trade.
- (3) "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.
- (4) "Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.
- (5) "Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract:
 - (a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
 - (b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.
- (6) "Commissioner" means the Commissioner of Labor or his duly authorized representatives.
- (7) "Workman" or "worker" includes laborer, mechanic, skilled or semi-skilled, laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purpose of P.L. 1963, c.150 (C.34:11-56.25 et seq.), contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.
- (8) "Work performed under a rehabilitation program" means work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.
- (9) "Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.
- (10) "Act" means the provisions of P.L.1963, c. 150 (C.34:11-56.25 et seq.) and the rules and regulations issued hereunder.
- (11) "Prevailing wage contract threshold amount" means:

(a) In the case of any public work paid for in whole or in part out of the funds of a municipality in the State of New Jersey or done on property or premises leased or to be leased by the municipality, the dollar amount established for the then current calendar year by the commissioner through rules and regulations promulgated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et seq.), which amount shall be equal to \$9,850 on July 1, 1994 and which amount shall be adjusted on July 1 every five calendar years thereafter in direct proportion to the rise or fall in the average of the Consumer Price Indices for Urban Wage Earners and Clerical Workers for the New York metropolitan and the Philadelphia metropolitan regions as reported by the United States Department of Labor during the last full calendar year preceding the date upon which the adjustment is made; and

(b) In the case of any public work other than a public work described in paragraph (a) of this subsection, an amount equal to \$2,000.

(12)"Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation.

34:11-56.27. Required contract provisions; liability of contractor and sureties for excess costs

Every contract in excess of the prevailing wage contract threshold amount for any public work to which any public body is a party or for public work to be done on property or premises leased or to be leased by a public body shall contain a provision stating the prevailing wage rate which can be paid (as shall be designated by the commissioner) to the workers employed in the performance of the contract and the contract shall contain a stipulation that such workers shall be paid not less than such prevailing wage rate. Such contract shall also contain a provision that in the event it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract the public body or lessor may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable to the public body or lessor for any excess costs occasioned thereby.

34:11-56.28. Specification of prevailing wage rate in contract

The public body or lessor awarding any contract for public work or otherwise undertaking any public work shall ascertain from the commissioner the prevailing wage rate in the locality in which the public work is to be performed for each craft or trade needed to perform the contract and shall specify in the contract itself what the prevailing wage rate in the locality is for each craft or trade or classification of all workmen needed to perform the contract during the anticipated term thereof. Nothing in this act however shall prohibit the payment of more than the prevailing wage rate to any workmen employed on a public work.

34:11-56.29. Record of wages paid by contractor and subcontractor

Every contractor and subcontractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by him in connection with a public work and such records shall be preserved for two years from date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, to any other party to the lease or agreement to lease pursuant to which the public work is done, and to the commissioner.

34:11-56.30. Establishment of prevailing wage rate by commissioner

The commissioner shall determine the prevailing wage rate and forthwith shall establish the prevailing wage in the locality in which the public work is to be performed for each craft or trade or classification of all workmen needed to perform public work contracts. The prevailing wage shall be determined and computed in accordance with rules and regulations issued by the commissioner as may be required to carry out the provisions of this act; provided, however, that employer contributions for employee benefits pursuant to a then existing bona fide collective bargaining agreement shall be considered an integral part of the wage rate paid by employers of any craft or trade in the locality under consideration for the purpose of determining the prevailing wage under this act. Said wage determination shall be conclusive for a period of 2 years from date of issuance unless superseded within said 2-year period by a later determination. The commissioner shall forthwith announce all said determinations and give notice by mail of all determinations of prevailing wage rates made pursuant to this section to any representative of any craft or trade, any employer, or any representative of any group of employers who shall in writing request the commissioner so to do.

34:11-56.31. Authority of commissioner

The commissioner shall have the authority to:

- (a) investigate and ascertain the wages of workmen employed in any public work in the State;
- (b) enter and inspect the place of business or employment of any employer or workmen in any public work in the State, for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of any such employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any such workmen; copy any or all of such books, registers, payrolls, and other records as he or his authorized representative may deem necessary or appropriate; and question such workmen for the purpose of ascertaining whether the provisions of this act have been and are being complied with;
- (c) require from such employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and such other information pertaining to his workmen and their employment as the commissioner, or his authorized representative may deem necessary or appropriate; and
- (d) require any employer to file, within 10 days of receipt of a request, any records enumerated in subsections (b) and (c) of this section, sworn as to their validity and accuracy. If the employer fails to provide the requested records within 10 days, the commissioner may direct within 15 days the fiscal or financial officer charged with the custody and disbursements of the funds of the public body which contracted for the public work immediately to withhold from payment to the employer up to 25% of the amount, not to exceed \$100,000.00, to be paid to the employer under the terms of the contract pursuant to which the public work is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records has been satisfied.

34:11-56.32. Posting of prevailing wage rates

Contractors and subcontractors performing public work of a public body subject to the provisions of this act shall post the prevailing wage rates for each craft and classification involved as determined by the commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workmen their wages.

34:11-56.33. Statement by contractor of amounts due workmen; deductions from payments to contractor; payments by public body to workmen

- (a) Before final payment is made by or on behalf of any public body or before the lessor makes such payment, of any sum or sums due on a public work it shall be the duty of the treasurer of the public body or other officer or person charged with the custody and disbursement of the funds of the public body, or lessor, to require the contractor and subcontractor to file written statements with the public body in form satisfactory to the commissioner certifying to the amounts then due and owing from such contractor and subcontractor filing such statement to any and all workmen for wages due on account of the public work, setting forth therein the names of the persons whose wages are unpaid and the amount due to each respectively, which statement shall be verified by the oath of the contractor or subcontractor, as the case may be, that he has read such statement subscribed by him, knows the contents thereof, and that the same is true of his own knowledge; provided, however, that nothing herein shall impair the right of a contractor to receive final payment because of the failure of any subcontractor to comply with provisions of this act.
- (b) In case any workman shall have filed a protest in writing within three months from the date of the occurrence of the incident complained of with the commissioner, objecting to the payment to any contractor to the extent of the amount or amounts due or to become due to the said workman for wages for work performed on a public work, the commissioner may direct the fiscal or financial officer of the public body or other person charged with the custody and disbursements of the funds of the public body, or the lessor, to deduct from the whole amount of any payment, the sum or sums admitted by any contractor in such statement or statements so filed to be due and owing by him on account of wages earned on such public work.

Such fiscal or financial officer, or the lessor, shall withhold the amount so deducted for the benefit of the workmen whose wages are unpaid as shown by the verified statement filed by such contractor, and shall pay directly to any workman the amount shown by such statement to be due to him for such wages. Such payment shall thereby discharge the obligation of the contractor to the person receiving such payment to the extent of the amount thereof.

34:11-56.34. Failure to pay prevailing wages; notice to commissioner; protest by workmen

- (a) The fiscal or financial officer or any public body, or lessor, having public work performed under which any workman shall have been paid less than the prevailing wage shall forthwith notify the commissioner in writing of the name of the person or firm failing to pay the prevailing wages.

- (b) Any workman may within two years from the date of the occurrence of the incident complained of file a protest in writing with the commissioner objecting to the amount of wages paid for service performed by him on a public work as being less than the prevailing wages for such services.
- (c) It shall not constitute a failure to pay the prevailing wage rates for the work of a particular craft or classification where the prevailing wage rate determined for a specific craft or classification has been paid and thereafter one or more craft unions contend that the work should have been assigned to their members instead of the members of the specific craft to whom it was assigned or by whom it was performed.

34:11-56.35. Violations; penalties

- (a) Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him under this act and each worker so paid, shall constitute a separate offense.
- (b) As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c. 150 (C. 34:11-56.25 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.
- (c) When the Commissioner of Labor finds that the employer has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

34:11-56.36. Supervision by commissioner of payment of amounts due workers; administrative fee

As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to workers under this act, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the workers, and paid on order of the commissioner directly to the worker or workers affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-56.37. Listing by commissioner of contractors failing to pay prevailing wages

In the event that the commissioner shall determine, after investigation, that any contractor or subcontractor has failed to pay the prevailing wage he shall thereupon list and keep on record the name of such contractor or subcontractor and forthwith give notice by mail of such list to any public body who shall request the commissioner so to do. Where the person responsible denies that a failure to pay the prevailing wage has occurred, he shall have the right to apply to the commissioner for a hearing which must be afforded and a decision rendered within 48 hours of the request for a hearing. If the commissioner rules against the petitioning party he shall have the right to apply for injunctive relief in the Superior Court against the listing by the commissioner.

34:11-56.38. Prohibition against award of contract to listed contractors; limitation

The public body awarding any contract for public work, or otherwise undertaking any public work, or entering into a lease or agreement to lease pursuant to which public work is to be done, shall first ascertain from the commissioner the list of names of contractors or subcontractors who have failed to pay prevailing wages as determined in section 13 of this act, and no contract shall be awarded to such contractor or subcontractor, or to any firm, corporation or partnership in which such contractor or subcontractor has an interest until three years have elapsed from the date of listing as determined in section 13 of this act.

34:11-56.39. Discrimination against workers; violation; penalty

Any employer who discharges or in any other manner discriminates against any worker because the worker has made any complaint to his employer, to the public body or to the commissioner that he has not been paid wages in accordance with the provisions of this act, or because the worker has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because the worker has testified or is about to testify in any such proceeding shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100 nor more than \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c. 150 (C. 34:11-56.25 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement laws" (N.J.S. 2A:58-1 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-56.40. Action for recovery of full amount of prevailing wage

If any workman is paid by an employer less than the prevailing wage to which such workman is entitled under the provisions of this act such workman may recover in a civil action the full amount of such prevailing wage less any amount actually paid to him or her by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such workman and the employer to work for less than such prevailing wage shall be no defense to the action. Any workman shall be entitled to maintain such action for and on behalf of himself or other workmen similarly situated, and such workman and workmen may designate an agent or representative to maintain such action for and on behalf of all workmen similarly situated. At the request of any workman paid less than the prevailing wage to which such workman was entitled under the provisions of this act the commissioner may take an assignment of the wage claim in trust for the assigning workman and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

34:11-56.41. Collective bargaining; effect of act

Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of workmen to bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act.

34:11-56.42. Partial invalidity

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

34:11-56.43. Rules and regulations

The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

34:11-56.44. Short title

This act shall be known as the "New Jersey Prevailing Wage Act."

34:11-56.45. Repeal of inconsistent acts

All acts and parts of acts are repealed insofar as they are inconsistent herewith.

34:11-56.47. Action for damages against contractor for failure to pay prevailing wages or taxes, contributions, assessments or benefits

- a. Any person who submits a bid directly to a public body for a contract for any public work subject to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C. 34:11-56.25 et seq.) and is not awarded the contract and whose bid is the lowest bid other than the bid accepted by the public body or, if, pursuant to law, the contract is awarded on the basis of factors other than or in addition to the lowest bid, whose bid is the highest in rank other than the bid accepted by the public body (hereinafter referred to in this section as the "plaintiff") may bring an action for damages in a court of competent jurisdiction against the contractor who was directly awarded the contract by the public body or any subcontractor of that contractor (hereinafter referred to in this section as the "defendant") alleging that the defendant has, in connection with work performed pursuant to the contract, violated the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or failed to pay any contribution, tax, assessment or benefit required by any other applicable law. If there is more than one losing bidder, a bidder with a higher bid than the second lowest bidder or lower rank than the second highest rank, if, pursuant to law, the contract is awarded on the basis of factors other than or in addition to the lowest bid, may bring the action if that bidder gives written notice of his intention to bring an action, sent by first-class mail and certified mail, return receipt requested, to every other losing bidder whose bid was lower than his or whose bid was higher in rank than his and none of the bidders notified files an action within 30 days following the date of their receipt of notice. The written notice of intention to bring an action must contain the following: (1) a statement of the specific violations or failures to pay allegedly committed, which shall not preclude, in the course of the action, consideration of other violations or failures to pay as may be revealed in the course of discovery, (2) a statement that the action is to be filed pursuant to this act, and (3) a statement that the recipient of the notice may have the right to file an action and will be precluded from doing so if he does not file an action within 30 days of his receipt of the notice. If no other losing bidder so notified files an action within 30 days of his receipt of the notice, the losing bidder who sent the notice shall file an action pursuant to this act within 15 days of the last day any of the recipients of the notice could have filed an action. If more than one bidder files an action, all actions other than that filed by the bidder whose bid is the lowest of the bidders who filed actions, or, if, pursuant to law, the contract is awarded on the basis of factors other than or in addition to the lowest bid, whose bid is the highest in rank of the bidders who filed actions, shall be dismissed.
- b. Upon a finding by the court that the plaintiff was a responsible bidder for the contract and a finding that one or more defendants violated the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or failed to pay any contribution, tax, assessment or benefit required by any other applicable law in connection with work performed pursuant to the contract, and that the plaintiff submitted a bid for the contract which was less than the sum total of the bid accepted by the public body plus any additional amount that the defendant or defendants would have paid during the term of the contract to be in full compliance with P.L.1963, c. 150 (C. 34:11-56.25 et seq.) and other applicable laws in connection with the contract, the court shall order the defendant or defendants to pay to the plaintiff the entire amount of damages sustained plus costs and reasonable attorney's fees or, if the court finds the noncompliance to be intentional, three times the amount of damages sustained plus costs and reasonable attorney's fees, except that the court shall order no payment to the plaintiff if the court finds that the violation or failure to pay was caused by minor record keeping mistakes or minor computational errors or by other minor mistakes. The occurrence of more than two violations or failures to pay shall lead to the rebuttable presumption that the violation or failure to pay at issue is not minor. If there are two or more defendants, the court shall allocate the payments for damages sustained and attorney's fees among the defendants in a reasonable manner. Nothing in this section shall be construed as requiring

payments to a plaintiff by any contractor or subcontractor who has not violated the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or failed to pay any contribution, tax, assessment or benefit required by any other applicable law in connection with work performed pursuant to the contract. A plaintiff may designate an agent or representative to maintain the action if the violation or failure to pay has an adverse effect on the agent or representative or, if the agent or representative is an organization or association, on any member of the organization or association. If the plaintiff prevails, the agent or representative shall be entitled to reimbursement for costs and reasonable attorney's fees of the agent or representative but not to a financial interest in the damages awarded.

- c. For the purposes of this section, the damages sustained by a plaintiff shall include the plaintiff's costs of preparing and submitting the bid and may, if sought by the plaintiff, include profits that the court determines the plaintiff would have made if the plaintiff had been awarded the contract and complied with P.L.1963, c. 150 (C. 34:11-56.25 et seq.) and other applicable laws.
- d. If the court determines that the defendant did not, in connection with work performed pursuant to the contract, violate the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or fail to pay any contribution, tax, assessment or benefit required by other applicable law, the court shall order the plaintiff to pay the costs and reasonable attorney's fees of the defendant. Nothing herein shall preclude a defendant who is found to have committed minor record keeping mistakes, minor computational errors or other minor mistakes from being awarded relief pursuant to section 1 of P.L.1988, c. 46 (C. 2A:15-59.1).

- e. As used in this section:

"Person" means any individual, corporation, company, partnership, firm, association or business;

"Contractor" means a person who is directly awarded a contract for a public work by a public body; and

"Subcontractor" means any subcontractor or lower tier subcontractor of a contractor.

34:11-56.48. Short title

This act shall be known and may be cited as "The Public Works Contractor Registration Act."

34:11-56.49. Legislative findings

The Legislature finds and declares that:

- a. There is growing concern over the increasing number of construction industry workers on public works projects laboring under conditions which violate State labor laws and regulations concerning wages, unemployment and temporary disability insurance, workers' compensation insurance, and the payment of payroll taxes;
- b. Contractors and subcontractors receiving the benefit of public tax dollars for their work should not be allowed to exploit their workers by denying them benefits and pay mandated by law;
- c. It is therefore necessary and proper for the Legislature to establish a registration system for contractors and subcontractors engaged in public works projects in order to better enforce existing labor laws and regulations in the public works industry.

34:11-56.50. Definitions relative to public works contractors.

As used in this act:

"Commissioner" means the Commissioner of Labor or his duly authorized representatives.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C.34:11-56.25 et seq.), and includes any subcontractor or lower tier subcontractor of a contractor as defined herein.

"Department" means the Department of Labor.

"Worker" includes laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether

their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site.

34:11-56.51. Registration required for contractors, subcontractors

No contractor shall bid on any contract for public work as defined in section 2 of P.L.1963, c. 150 (C.34:11-56.26) unless the contractor is registered pursuant to this act. No contractor shall list a subcontractor in a bid proposal for the contract unless the subcontractor is registered pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) at the time the bid is made. No contractor or subcontractor, including a subcontractor not listed in the bid proposal, shall engage in the performance of any public work subject to the contract, unless the contractor or subcontractor is registered pursuant to that act.

34:11-56.52. Required registration information

- a. A contractor shall register in writing with the department on a form provided by the commissioner. The form shall require the following information:
 - (1) The name, principal business address and telephone number of the contractor;
 - (2) Whether the contractor is a corporation, partnership, sole proprietorship, or other form of business entity;
 - (3) If the contractor's principal business address is not within the State, the name and address of the contractor's custodian of records and agent for service of process in this State;
 - (4) The name and address of each person with a financial interest in the contractor and the percentage interest, except that if the contractor is a publicly-traded corporation, the contractor shall supply the names and addresses of the corporation's officers;
 - (5) The contractor's tax identification number and unemployment insurance registration number; and
 - (6) Any other relevant and appropriate information as determined by the commissioner.
- b. At the time of registration, and subsequently upon request, the contractor shall submit to the commissioner documentation demonstrating that the contractor has worker's compensation insurance coverage for all workers as required by law.

34:11-56.53. Non refundable registration fees.

- a. The contractor shall pay an initial annual non-refundable registration fee of \$300 to the commissioner. The non-refundable registration fee for the second annual registration shall be \$300. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$500.
- b. A contractor who is performing public work on the effective date of this act shall submit the registration application form and fee to the commissioner within 30 days of the effective date of this act.
- c. Registration fees collected pursuant to this act shall be applied toward the enforcement and administration costs of the Division of Workplace Standards, Office of Wage and Hour Compliance, Public Contracts section and Registration section within the department.

34:11-56.54. Issuance of certificate of registration

Upon receipt of the fee, form and documentation required by section 5 of this act, the commissioner shall issue a certificate of registration to the contractor. A registration certificate shall be valid for one calendar year from the date of registration. Registrations shall be renewed not less than 30 days before the expiration date of the immediately preceding registration.

34:11-56.55. Submission of all subcontractor registration certificates by contractor

Each contractor shall, after the bid is made and prior to the awarding of the contract, submit to the public entity the certificates of registration for all subcontractors listed in the bid proposal. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section.

34:11-56.56. Violations; disorderly persons offense; other penalties; surety bonds

- a. A contractor who: (1) willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act; (2) fails to make, keep, and preserve any records as required under the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C.34:11-56.25 et seq.); (3) falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand; (4) refuses to furnish a sworn statement of such records or any other information required for the enforcement of this act to the commissioner upon demand; (5) pays or agrees to pay wages at a rate less than the rate prescribed by the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C.34:11-56.25 et seq.); or (6) otherwise violates any provision of this act, shall be guilty of a disorderly persons offense.
- b. As an alternative to or in addition to sanctions provided by the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C.34:11-56.25 et seq.), the commissioner may, after providing the contractor with notice of any alleged violation of this act, and with an opportunity to request a hearing before the commissioner or his designee:
 - (1) Deny renewal, revoke or suspend the registration of a contractor for a period of not more than five years; or
 - (2) Require a contractor, as a condition of initial or continued registration, to provide a surety bond payable to the State. The surety bond shall be for the benefit of workers damaged by any failure of a contractor to pay wages or benefits pursuant to or otherwise comply with the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C.34:11-56.25 et seq.) or this act. The surety bond shall be in the amount and form that the commissioner deems necessary for the protection of the contractor's workers, but shall not exceed \$10,000 per worker. The surety bond shall be issued by a surety that meets the requirements of N.J.S.2A:44-143.

34:11-56.57. Regulations

The commissioner may adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

CHAPTER 1B (PROMOTION OF BUSINESS AND INDUSTRY)

I. NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ACT

34:1B-5.1. Rules, regulations relative to payment of prevailing wage rate; "authority financial assistance" defined

The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract undertaken in connection with any of its projects, those projects which it undertakes pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.) or school facilities projects or undertaken to fulfill any condition of receiving authority financial assistance. The prevailing wage rate shall be the rate determined by the Commissioner of Labor pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). For the purposes of this section, "authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance approved, funded, authorized, administered or provided by the authority to any entity, including but not limited to, all authority financial assistance received by the entity pursuant to P.L.1996, c.26 (C.34:1B-124 et seq.) that enables the entity to engage in a construction contract, but this shall not be construed as requiring the payment of the prevailing wage for construction commencing more than two years after the assistance is received.

34:1B-5.2. Administration and enforcement of rules and regulations

The rules and regulations adopted under section 1 of this act shall provide for the proper and appropriate administration and enforcement of such regulations.

34:1B-5.3. Violation of rules and regulations

A violation of the rules and regulations adopted pursuant to section 1 of this act shall be deemed to be a violation of P.L.1963, c. 150 (C. 34:11-56.25 et seq.). The Commissioner of Labor and Industry and any worker shall have the same powers of enforcement against violations of such rules and regulations as are provided by Sections 11 through 16, inclusive, of P.L.1963, c. 150 (C. 34:11-56.35-34:11-56.40).

34:1B-5.4. Affirmative action program

- a. The New Jersey Economic Development Authority shall adopt rules and regulations to establish an affirmative action program for the hiring of minority workers employed in the performance of construction contracts undertaken in connection with any of its projects and school facilities projects, and to expand the business opportunities of socially and economically disadvantaged contractors and vendors seeking to provide materials and services for those contracts, consistent with the provisions of the "Law Against Discrimination," P.L.1945, c. 169 (C.10:5-1 et seq.) and the authority shall provide for the proper enforcement and administration of such rules and regulations.
- b. Within 180 days of the effective date of P.L.2000, c. 72 (C.18A:7G-1 et al.), but before adoption of its rules and regulations concerning its affirmative action program, the authority shall submit the proposed rules and regulations to the presiding officers and the standing committees on State government of both houses of the Legislature for their review.

CHAPTER 19 (NEW JERSEY URBAN DEVELOPMENT CORPORATION)

55:19-15. Wage rate of workmen employed on projects

Any builder, contractor or subcontractor engaged upon a project within the meaning of this act, and any person, firm or corporation managing or operating such a project, including the corporation and its subsidiaries, shall pay the workmen employed in the construction, reconstruction, demolition, or rehabilitation thereof not less than the prevailing wage rate. The prevailing wage rate shall be determined by the Commissioner of the New Jersey Department of Labor in all cases, except that the prevailing wage rate shall be determined by the Secretary of the United States Department of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. § 276a to 276a-5), when the loan or other assistance given by the corporation in connection with the work, or the funds of the corporation or subsidiary thereof expended for the work, are the subject of direct or indirect federal assistance other than federal tax exemption of the interest paid on obligations of the corporation or a subsidiary thereof.

55:19-38. Payment of prevailing wage required

Any builder, contractor or subcontractor engaged upon a project within the meaning of P.L.1996, c. 62 (C. 55:19-20 et al.), and any person, firm or authority managing or operating such a project, including the authority and its subsidiaries, shall pay the workmen employed in the construction, reconstruction, demolition, or rehabilitation thereof not less than the prevailing wage rate. The prevailing wage rate shall be determined by the Commissioner of Labor in all cases, except that the prevailing wage rate shall be determined by the Secretary of the United States Department of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. § 276a to 276a-5), when the loan or other assistance given by the authority in connection with the work, or the funds of the authority or subsidiary thereof expended for the work, are the subject of direct or indirect federal assistance other than federal tax exemption of the interest paid on obligations of the authority or a subsidiary thereof.

N.J.S.A. 5:12-161.3 et seq. CASINO REDEVELOPMENT AUTHORITY

5:12-161.3. Prevailing wage rate for workers employed on projects with Casino Redevelopment Authority involvement

1. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by the Casino Reinvestment Development Authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

5:12-161.4. Exercise of rights, powers or duties

2. For the purpose of implementing the provisions of sections 1 through 3 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

5:12-161.5. Prevailing wage rules, regulations, adoption by Casino Reinvestment Development Authority

3. The Casino Reinvestment Development Authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

5:12-161.6. Inapplicability of C.5:12-161.3 through C.5:12-161.5

4. The provisions of sections 1 through 3 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

N.J.S.A. 18A:72A-5.1 et seq. NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY

18A:72A-5.1. Prevailing wage rate for workers employed on projects with New Jersey Educational Facilities Authority involvement.

5. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by the New Jersey Educational Facilities Authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

18A:72A-5.2. Exercise of rights, powers or duties.

6. For the purpose of implementing the provisions of sections 5 through 7 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

18A:72A-5.3. Prevailing wage rules, regulations, adoption by New Jersey Educational Facilities Authority.

7. The New Jersey Educational Facilities Authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

18A:72A-5.4. Inapplicability of C.18A:72A-5.1 through C.18A:72A-5.3.

8. The provisions of sections 5 through 7 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

N.J.S.A. 26:2I-5.3 et seq. NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY

26:2I-5.3. Prevailing wage rate for workers employed on projects with New Jersey Health Care Facilities Financing Authority involvement.

9. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by the New Jersey Health Care Facilities Financing Authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

26:2I-5.4. Exercise of rights, powers or duties.

10. For the purpose of implementing the provisions of sections 9 through 11 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

26:2I-5.5. Prevailing wage rules, regulations, adoption by New Jersey Health Care Financing Authority.

11. The New Jersey Health Care Facilities Financing Authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

26:2I-5.6 Inapplicability of C.26:2I-5.3 through C.26:2I-5.5.

12. The provisions of sections 9 through 11 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

N.J.S.A. 40:37A-55.2 et seq. COUNTY IMPROVEMENT AUTHORITY

40:37A-55.2 Prevailing wage rate for workers employed on projects with county improvement authority involvement.

13. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by a county improvement authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

40:37A-55.3 Exercise of rights, powers or duties.

14. For the purpose of implementing the provisions of sections 13 through 15 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

40:37A-55.4 Prevailing wage rules, regulations, adoption by county improvement authority.

15. Each county improvement authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

40:37A-55.5 Inapplicability of C.40:37A-55.2 through C.40:37A-55.4.

16. The provisions of section 13 through 15 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

N.J.S.A. 2C:21-34 NEW JERSEY CODE OF CRIMINAL JUSTICE

2C:21-34 Penalty for false contract payment claims, representation, for a government contract; prevailing wage violations; grading

- (a) A person commits a crime if the person knowingly submits to the government any claim for payment for performance of a government contract knowing such claim to be false, fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the claim is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.
- (b) A person commits a crime if the person knowingly makes a material representation that is false in connection with the negotiation, award or performance of a government contract. If the contract amount is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the contract amount exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the contract amount is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.
- (c) An employer commits a crime if the employer knowingly pays one or more employees employed in public work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) at a rate less than the rate required pursuant to that act. If the contract amount is for \$75,000.00 or above, the employer is guilty of a crime of the second degree; if the contract amount exceeds \$2,500.00, but is less than \$75,000.00, the employer is guilty of a crime of the third degree; and if the contract amount is for \$2,500.00 or less, the employer is guilty of a crime of the fourth degree. In addition, the employer shall be deemed to have caused loss to the employees in the amount by which the employees were underpaid and shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and restitution to victims and be subject to other pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.

CHAPTER 60 (PREVAILING WAGES FOR PUBLIC WORKS)

SUBCHAPTER 1. GENERAL PROVISIONS

12:60-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:60, Prevailing Wages for Public Works.

12:60-1.2 Authority

These rules are promulgated pursuant to the authority of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

12:60-1.3 Purpose

(a) The purpose of this chapter is to:

1. List each and every craft, trade, or class of workmen employed on public works in each of the 21 counties of the State; and

2. List the criteria to be used when an issue regarding the establishment of a craft, trade or class of workmen arises.

12:60-1.4 Scope

- (a) This chapter shall implement the Act by listing by name each craft, trade or class of workmen utilized in the various counties of the State; and
- (b) This chapter shall apply to every contract in excess of \$11,892 awarded in whole or in part by a municipal public body and to every subcontract pursuant to said contract. It shall also apply to every contract in excess of \$2,000 awarded by a nonmunicipal public body and to every subcontract pursuant to said contract.

12:60-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:60-6.

12:60-1.6 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:60-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

"Certified payroll record" means a payroll record which is attested to by the employer, or the owner of the company doing business as the employer, or a corporate officer of such company, or an authorized agent of the employer.

"Commissioner" means the Commissioner of Labor, or his duly authorized designee.

"Department" means the Department of Labor.

"Division of Workplace Standards" means the Division of Workplace Standards, New Jersey Department of Labor, PO Box 054, Trenton, New Jersey 08625-0054.

"Employer" means any natural person, company, firm, subcontractor or other entity engaged in public work.

"Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workmen in such craft or trade.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Office of Wage and Hour Compliance" means the Office of Wage and Hour Compliance of the Division of Workplace Standards, New Jersey Department of Labor, PO Box 389, Trenton, N.J. 08625-0389.

"Payroll record" means a form satisfactory to the Commissioner, wherein is shown employee information such as name, address, social security number, craft or trade, together with actual hourly rate of pay, actual daily, overtime and weekly hours worked in each craft or trade, gross pay, itemized deductions, and net pay paid to the employee; such record shall also include:

1. Any fringe benefits paid to approved plans, funds or programs on behalf of the employee; and
2. Fringe benefits paid in cash to the employee.

"Persons" means any natural person, company, firm, association, corporation, contractor, subcontractor or other entity engaged in public work.

"Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workmen of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract:

1. Not less than 55 percent of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
2. The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

SUBCHAPTER 2A. APPLICATION OF THE PREVAILING WAGE ACT TO OFF-SITE ACTIVITIES

12:60-2A.1 Off-site manufacturing, custom fabrication, or furnishing of materials, articles, supplies or equipment

(a) The manufacture or furnishing of materials, articles, supplies or equipment will be subject to the Prevailing Wage Act if conducted in connection with, and at the work-site of, such public works project.

(b) The work-site shall be deemed to include the following:

1. The physical place or places where the building or work called for in the public works contract, which is subject to the terms of the Prevailing Wage Act, will remain; and
2. Any other site where a significant portion of the building or work associated therewith, is constructed, provided that such site is established specifically for the performance of the contract or project.

(c) The following shall be considered to be part of the work-site of a public works project and subject to the terms of the Prevailing Wage Act:

1. Job headquarters, tool yards, batch plants, borrow pits, custom fabrication centers and any other related manufacturing or construction site of the same contractor or a subcontractor provided that:
 - i. They are dedicated exclusively or primarily, to the performance of the public works contract or building project; and
 - ii. They are adjacent or virtually adjacent to the site of the work as defined in (b)1 above.

(d) Not included in the site of the work are those locations which were established by a supplier of materials for a public works construction project before the opening of bids and not on the site of the work as set forth in (b)1 and 2 above.

SUBCHAPTER 3. CRITERIA FOR ESTABLISHMENT OF CRAFTS, TRADES OR CLASSES OF WORKMEN

12:60-3.1 Scope of subchapter

This subchapter establishes the criteria to be used to classify a craft, trade or class of workmen.

12:60-3.2 Criteria for establishment

(a) The criteria used to establish a craft, trade or class of workmen shall include:

1. Work history and industry practice;
2. Training and skills;
3. Nature of the specific work in issue;
4. Craft union collective bargaining agreements and craft recognition; and
5. Governmental regulation and recognition.

(b) In establishing a craft, trade or class of workmen, the Department shall consider any relevant information, documentation, or argument presented by an interested party and submitted to:

New Jersey Department of Labor
Division of Wage and Hour Compliance
John Fitch Plaza
PO Box 389
Trenton, New Jersey 08625-0389

SUBCHAPTER 4. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:60-4.1 Documents referred to by reference

The full title and edition of each of the standards and publications referred to in this chapter are as follows:

N.J.S.A. 34:11-56.25 et seq., New Jersey Prevailing Wage Act.

12:60-4.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Wage and Hour Compliance between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Wage and Hour Compliance
John Fitch Plaza
PO Box 389
Trenton, New Jersey 08625-0389

12:60-4.3 Availability of documents from issuing organization

Copies of the referred to standards and publications in this chapter may be obtained from the organization listed below or from the website of the Department of Labor at www.nj.gov/labor.

Copies available from:

Division of Wage and Hour Compliance
New Jersey Department of Labor
John Fitch Plaza
PO Box 389
Trenton, New Jersey 08625-0389

SUBCHAPTER 5. INSPECTION OF RECORDS

12:60-5.1 Inspections

(a) The Commissioner, or an authorized designee, shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect wages, hours and other conditions of employment for public works employees;
2. Question public works workmen to determine whether they are aware of violations of the prevailing wage act; and
3. Require public works employers to submit written statements, including sworn statements, concerning wages, hours, names, addresses and any other employee information as may be determined necessary by the Commissioner.

- (b) If, within 10 days of a request by the Commissioner, a public works employer fails to file the material listed in (a)1 or 3 above, sworn as to its accuracy, the Commissioner may, within 15 days:
1. Direct the officer responsible for disbursement of funds for the public body which contracted for the public works project to withhold from the employer 25 percent of the amount, not to exceed \$100,000, due the employer under the contract for the project.
 2. When the employer complies with the request for records, the Commissioner shall notify the public body, who shall immediately release the withheld funds.
- (c) The public works contractors and subcontractors shall submit to the public body or lessor which contracted for the public works project the following in a form satisfactory to the Commissioner (see Appendix A, incorporated herein by reference).
1. A certified payroll record on each public works project.
 - i. Such record shall be submitted each payroll period within 10 days of the payment of wages.
 - ii. The public body shall receive, file, store and make available for inspection at its normal place of business and during normal business hours the certified payroll records.

SUBCHAPTER 6. CRITERIA FOR DETERMINING APPRENTICE TO JOURNEYMAN RATIO

12:60-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Apprentice" means an individual who, while performing work on a public work project, is registered, in good standing, in an apprenticeship program approved or certified by the Division of Vocational Education in the New Jersey Department of Education or by the Bureau of Apprenticeship and Training in the United States Department of Labor.

"Records" means all books, registers, payrolls, and any other documentation maintained by the employer that have a bearing upon the question of wages, hours and other conditions of employment of any workmen.

12:60-6.2 Responsibilities of contractors and subcontractors

- (a) A contractor or subcontractor employing one or more apprentices on a public work project shall maintain with its records written evidence that the apprentice or apprentices are registered in an approved apprenticeship program while performing work on the project.
1. The contractor or subcontractor shall make all records available for inspection by the public body awarding the contract and by the Commissioner during normal business hours.
 2. The awarding body and the Commissioner shall have unencumbered access to the employees who are employed on a public work project for the purpose of interviewing and determining compliance.
- (b) A contractor or subcontractor shall not create job titles and worker classifications which are not consistent with prevailing practices and existing task ratios for a specific building trades craft for the purpose of circumventing the intent of this subchapter.

12:60-6.3 Ratio of apprentices to journeymen

- (a) Upon determining the prevailing wage rate and establishing the prevailing wage in the locality for each craft, trade or class of workmen needed to perform public work contracts, the Commissioner shall also determine the ratio of apprentices to journeymen for the purpose of establishing the number of workmen who may be paid the apprentice rate.
- (b) If no ratio of apprentices to journeymen is set forth in the collective bargaining agreement used by the Commissioner to make his or her prevailing wage determination, the maximum ratio of apprentices to journeymen shall be one apprentice to every four journeymen.
- (c) If the prevailing collective bargaining agreement for a craft or trade does not provide for an apprentice rate, the employer shall pay the employees not less than the journeyman's rate even if an employee is registered in an apprentice program for that trade.

12:60-6.4 Correction of wage rate

- (a) If the Department determines that a worker who has been paid an apprentice wage rate on a project is entitled to a journeyman's rate, the Department shall conduct an audit and require the contractor or subcontractor to pay the worker an additional amount equal to the difference between the rate of an apprentice and the rate of a journeyman plus any applicable benefits the worker is entitled to as a journeyman.

SUBCHAPTER 7. DEBARMENT FROM CONTRACTING

12:60-7.1 Purpose and scope

- (a) The purpose of this subchapter is to set forth the conditions which constitute grounds for debarment from public works and Economic Development Authority (EDA) contracts, and to notify individuals of the departmental policies and procedures concerning debarment.
- (b) The provisions of this subchapter shall be applicable to all contractors, subcontractors, and other persons who perform public works for any public body and EDA projects in New Jersey.

12:60-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Labor or his or her designee.

"Contractor" means a person who undertakes to perform a job or piece of a public works project or EDA project and who retains control of the means, method and manner of accomplishing the desired result. Contractor includes the officers and directors of a corporate contractor.

"Debarment" means the inclusion on a Statewide list of persons who are prohibited from performing public works or EDA projects, on the basis of a lack of responsibility evidenced by an offense as set forth in this subchapter.

"Department" means the New Jersey Department of Labor.

"Entity" means a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust or organization.

"Interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant or representative. The term also includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed, or to be performed, for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment or supplies that have been or will be sold, rented or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Interest," however, does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

"Person" means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor or other entity engaged in public works or EDA projects.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means constructions, reconstruction, demolition, alteration, or repair work or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

"Suspension" means that an affected contractor shall not bid on or engage in any public works project effective upon the date on which he or she receives the Commissioner's Notification of Suspension Pending Debarment. Suspension shall not include public works projects bearing award dates which precede receipt of said notification.

12:60-7.3 Conditions of debarment

- (a) Debarment from public works or EDA contracts shall be made only with the approval of the Commissioner, except as otherwise provided by law.
- (b) The Commissioner may debar a person, after an investigation and determination that the person has failed or refused to pay the prevailing wage rate.
- (c) A violation as listed in (b) above shall not necessarily require that a person be debarred. In each case, the decision to debar shall be made at the discretion of the Commissioner unless otherwise provided by law. The Commissioner may consider the following factors as material in each decision to debar:
 - 1. The record of previous violations by the person with the Office of Wage and Hour Compliance;
 - 2. Previous cases of debarment by the Commissioner;
 - 3. The frequency of violations by the person discovered in previous cases;
 - 4. The significance or scale of the violations, consisting of shortfalls in wages or fringe benefits computed in audits;
 - 5. The existence of outstanding audit(s) or failure(s) to pay;
 - 6. Failure to respond to a request to produce records, forms, documents, or proof of payments; and
 - 7. Submission of falsified or altered records, forms, documents, or proof of payment.
- (d) The Commissioner may suspend a person pending debarment. The bases therefor shall include any or all of the following:
 - 1. A history of any previous violation by the contractor of the New Jersey Prevailing Wage Act or Contractor Registration Act or any of their subsidiary regulations;
 - 2. A history of a prior debarment or of a penalty imposed in a contested matter;
 - 3. The existence of other contested prevailing wage or contractor registration matters pending against the contractor;
 - 4. The size and scale of an outstanding audit by the Division of Wage and Hour Compliance is such as to indicate that the alleged violation by the contractor of the New Jersey Prevailing Wage Act, even absent a previous history of violations thereof, is significant; and/or
 - 5. Aggravating factors which may include, but are not limited to:
 - i. Falsified testimony or statements;
 - ii. Attempts to evade investigations conducted by the Department;
 - iii. Attempts to intimidate or coerce workers from cooperating with the Department and its representatives in the investigation of the contractor;
 - iv. A history of not adhering to prior settlement agreements reached previously with the Department regarding the payment of wages, fees and penalties; and
 - v. A history of hiring subcontractors who have been found to be in violation of the Prevailing Wage Act or the Contractor Registration Act.
- (e) When the Commissioner suspends a person from contracting, the person suspended shall be furnished with a written notice, which may be included in the notification of debarment, stating:
 - 1. That suspension has been imposed, the date on which it becomes effective and the reasons therefor;
 - 2. That if the contractor chooses to contest the suspension pending debarment, the contractor shall notify the Department in writing of that decision within 72 hours of receipt of the notification of suspension; and
 - 3. That the suspension is for a temporary period, but that whenever debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

- (f) A Departmental-level hearing on the suspension will be held before the Director of the Division of Wage and Hour Compliance, or his or her designee, within seven days of the receipt by the Department of the contractor's notification contesting the suspension.
1. The Director, or his or her designee, shall permit the contractor to explain his or her position as to why suspension should not be imposed and to present evidence expeditiously in support of that position;
 2. At the conclusion of the Departmental-level hearing, the Director, or his or her designee, shall consider all of the evidence so presented and shall reevaluate the necessity of the suspension, if so warranted by the evidence; and
 3. The Director, or his or her designee, shall issue a written determination upholding or reversing the suspension and the reasons for same within five business days of the hearing.
- (g) If the contractor disagrees with the written determination, he or she shall appeal said determination to the Office of Administrative Law for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, in connection with the underlying debarment action.

12:60-7.4 Notification of debarment

- (a) When the Department seeks to debar a person, the person or persons shall be furnished with a written notice stating:
1. That debarment is being considered;
 2. The provisions of N.J.S.A. 34:11-56.37 and 34:11-56.38;
 3. The specific details of the violations referring to employees involved by name, job classifications, dates of violations and any amount found due;
 4. The public work or EDA project involved during which performance of the violations cited occurred; and
 5. That the person shall have the right to appeal the debarment to the Commissioner within 15 days of the date of the notice of intent to debar. Any appeal received within the 15-day period will be filed as of the 15th day.
- (b) The notice of intent to debar shall be mailed, by regular mail and return receipt requested, to each corporate officer of record, partner, individual proprietor or other involved person.
- (c) If, after confirmation that the person has been mailed the notice of intent to debar, the person has not filed an appeal, the person shall be listed as a debarred person.
- (d) All hearings conducted pursuant to this section shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and N.J.A.C. 1:12B. Where any other State department or agency has already imposed debarment upon a party, the Commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the Commissioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or part.
- (e) Debarment shall be for a period of three years.

12:60-7.5 Lists

The Department shall provide the State Treasurer with the names of all persons debarred and the effective date and period of debarment, if any.

SUBCHAPTER 8. VIOLATIONS, PENALTIES, AND FEES

12:60-8.1 Purpose; scope

- (a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-56.25 et seq., the New Jersey Prevailing Wage Act (Act), provide sanctions for non-compliance, and to protect established wage rates.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act; and
2. Wages paid to an employee for services rendered.

12:60-8.2 Violations of the Act

(a) Violations of the Act shall occur when an employer:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter;
2. Fails to make, keep and preserve any records as required under the provisions of this chapter;
3. Falsifies any such record;
4. Refuses to make any such record accessible to the Commissioner upon demand;
5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand;
6. Pays or agrees to pay wages at a rate less than the prevailing rate applicable under this chapter;
7. Requests, demands, or receives, either for himself or any other person, either before or after a worker is engaged in public work at a specified rate of wages, the following:
 - i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her wages, salary or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment; or
8. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of this chapter shall be guilty of a disorderly persons offense and shall, upon conviction therefor:

1. Be fined not less than \$100.00 nor more than \$1,000;
2. Be imprisoned for not less than 10 nor more than 90 days; or
3. Be subject to both the fine and imprisonment.

(c) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

12:60-8.3 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:60-8.2, pursuant to N.J.S.A. 34:11-56.25 et seq. when the Commissioner finds that an employer has violated that Act, the Commissioner is authorized to assess and collect administrative penalties in the amounts that follow:

1. First violation—not more than \$2,500.
2. Second and subsequent violations—not more than \$5,000.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 working days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15—working day period following receipt of the notice.
 2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.
 3. All wages due, fees and penalties shall be paid within 30 days of the date of the final order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.
 4. All payments shall be made payable to the "Commissioner of Labor, Prevailing Wage Trust Fund". All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner of Labor.
- (c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations.
1. The seriousness of the violation;
 2. The past history of previous violations by the employer;
 3. The good faith of the employer;
 4. The size of the employer's business; and
 5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:60-8.4 Administrative fees

- (a) The Commissioner is authorized to supervise the payment of amounts due to employees under this chapter, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employee, and paid on order of the Commissioner directly to the employee or employees affected.
- (b) The employer shall also pay the Commissioner an administrative fee on all payments due to employees pursuant to Articles 1 and 2 of Chapter 11 of Title 34 of the revised statutes.
- (c) A schedule of the administrative fees is set forth in Table 8.4(c) below:

Table 8.4(c) Schedule of Administrative Fees

1. First violation—10 percent of amount of any payment made to the Commissioner pursuant to this chapter;
2. Second violation—18 percent of amount of any payment made to the Commissioner pursuant to this chapter;
3. Third and subsequent violations—25 percent of amount of any payment made to the Commissioner pursuant to this chapter.

12:60-8.5 Interest

- (a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:
- When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
- Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
- Where the Commissioner finds sufficient cause based on the particular case.
- (b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:60-8.6 Hearings

- (a) No assessment of wages, fees or penalties shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the wages, fees and/or penalties, and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice of assessment. All contested cases shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The filing of a request for a hearing regarding wages, fees or penalties shall not preclude the Commissioner from pursuing other remedies under the Prevailing Wage Act, including debarment pursuant to N.J.S.A. 34:11-56.37 and 56.38.
- (b) All requests for a hearing shall be reviewed by the Office of Wage and Hour Compliance to determine if the reason for dispute could be resolvable at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.
- (c) The Commissioner shall make the final decision of the Department.
- (d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.
- (e) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, reschedule a hearing.
- (f) If the Commissioner or his or her designee does not authorize such a rescheduled hearing, then the Commissioner shall issue a final agency determination.
- (g) Payment of the wages, fees and/or penalties is due when a final agency determination is issued.
- (h) Upon final determination, the wages, fees and penalties may be recovered with cost in a summary proceeding commenced by the Commissioner.

12:60-8.7 Discharge or discrimination against employee making complaint

- (a) An employer is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the public body, or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000.00.
- (b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a.24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:60-8.3.

APPENDIX A FORM TO FACILITATE THE SUBMISSION OF PAYROLL RECORDS

Editor's Note: N.J.A.C. 12:60, Appendix A, is not reproduced in the New Jersey Administrative Code. A copy may be obtained by contacting the Department of Labor and Workforce Development, Division of Wage and Hour Compliance, P.O. Box 389, Trenton, New Jersey 08625-0389, or visiting the Department's web site at www.nj.gov/labor.

CHAPTER 62 (PUBLIC WORKS CONTRACTOR REGISTRATION)

SUBCHAPTER 1. GENERAL PROVISIONS

12:62-1.1 Application and scope

The rules in this chapter are promulgated by the Department of Labor and Workforce Development in order to implement "The Public Works Contractor Registration Act," P.L. 1999, c.238 (N.J.S.A. 34:11-56.48 et seq.). The Act establishes a unified procedure for the registration of contractors and subcontractors engaged in public works projects.

The provisions of this chapter shall apply to all contractors, as that term is defined in N.J.A.C. 12:62-1.2.

12:62-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means ""The Public Works Contractor Registration Act" (P.L. 1999, c.238; N.J.S.A. 34:11-56.48 et seq.) and the rules promulgated thereunder.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her duly authorized representatives.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq., and includes any subcontractor or lower tier subcontractor of a contractor as defined in this section.

"Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems and mechanical insulation.

"Department" means the Department of Labor and Workforce Development.

"Maintenance" means ""maintenance work" as that term is defined at N.J.S.A. 34:11-56.26, namely, the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

"Public work" means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into the contract:

1. Not less than 55 percent of the property or premises is leased by a public body or is subject to an agreement to be subsequently leased by the public body;
2. The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

"Subcontractor" means any subcontractor or lower tier subcontractor of a contractor, including owner operators or independent contractors.

"Worker" includes a laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purposes of these rules, contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.

12:62-1.3 Administration and enforcement

The Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development, shall administer and enforce this chapter. All the powers, duties and responsibilities vested in the Commissioner by the Public Works Contractor Registration Act are hereby delegated to and vested in the Director of the Division of Wage and Hour

Compliance, except the power to adopt, amend or repeal rules and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

12:62-1.4 Validity

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter. To this end, the provisions of this chapter are severable.

SUBCHAPTER 2. PUBLIC WORKS CONTRACTOR REGISTRATION

12:62-2.1 Registration required

- (a) No contractor shall bid on any contract for public work unless the contractor is registered pursuant to the Act. In addition:

No contractor shall list a subcontractor, including a contractor/subcontractor who is involved in off-site custom fabrication, as defined in N.J.S.A. 34:11-56.26, in a bid proposal for a public works contract unless the subcontractor as required is registered pursuant to the terms of N.J.S.A. 34:11-56.48 et seq., the Public Works Contractor Registration Act, at the time the bid is submitted to the public entity; and

No contractor or subcontractor not listed on the bid proposal shall engage in the performance of any public work project unless the contractor or subcontractor is registered pursuant to the Act.

- (b) Any contractor which seeks to register under the Act shall apply to the Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development. For this purpose, the Department shall prepare a "New Jersey Department of Labor and Workforce Development Application for Public Works Contractor Registration." This form shall be available from the Department.

- (c) As part of its application to the Department, a contractor shall provide all required information and documents requested by the Application for Public Works Contractor Registration. The information to be submitted for review shall include:

The name, principal business address, telephone and fax number as well as any e-mail address of the business;

Whether the contractor or subcontractor is a corporation, partnership, sole proprietorship, or other form of a business entity;

The name and address of the custodian of records and agent for service of process within the State of New Jersey;

The name, addresses of residence, and telephone number of each person with a financial interest in the business and the percentage of interest, except that if the business is a publicly traded corporation, the contractor shall supply the names and addresses of residence of the corporation's officers;

The business' Federal Employer Identification Number and State of New Jersey Taxpayer Identification Number;

A history of previous and/or current labor law violations and the final dispositions of such violations and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects;

Proof of workers' compensation insurance; and

Any other relevant and appropriate information from a particular applicant as determined by the Commissioner.

- (d) The contractor shall pay an initial, non-refundable, annual registration fee of \$300.00 to the Commissioner. The non-refundable fee for the second annual registration shall be \$300.00. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$500.00. However, a two-year registration will only be granted if the applicant has not violated the Act and/or the Prevailing Wage Act or these rules during the period of licensure preceding submission of the renewal application.
- (e) An applicant shall fully and accurately complete all relevant parts of the Application for Public Works Contractor Registration. Failure to provide a complete application shall result in rejection.

- (f) An applicant who fails to provide specifically requested additional information or documentation shall be considered not in compliance with the Act and shall be subject to rejection.
- (g) If the applicant knowingly supplies incomplete or inaccurate information to the Department in connection with his or her application, he or she shall be disqualified under these rules, barred from reapplying for registration for a period of up to one year from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. 12:62-2.3, 2.4 and 2.5.

12:62-2.2 Issuance and term of a certificate of registration

Upon receipt of the fee, a fully completed form and all documentation required under N.J.A.C. 12:62-2.1, the Commissioner shall issue a certificate of registration to the contractor within 30 days.

An initial certificate of registration shall be valid only for a period of one calendar year from the date of registration.

Registration shall be renewed not less than 30 calendar days prior to the expiration date of the immediately preceding registration. However, renewal shall be predicated upon the contractor not having knowingly or willfully violated the provisions of the Act or of the New Jersey Prevailing Wage Act during the period of licensure preceding the renewal application.

Each contractor shall, after the bid is made and prior to the awarding of the public works contract, submit to the public entity for whom the work is to be performed the certificates of registration for all subcontractors listed in the bid proposal.

A certificate of registration shall not be transferable.

A registered contractor who allows his or her contractor registration certificate to expire prior to attempting to renew same, must subsequently apply for a registration certificate as if for the first time.

12:62-2.3 Disorderly persons offense

(a) A contractor who commits any of the following acts shall be guilty of a disorderly persons offense:

1. Willfully hindering or delaying the Commissioner in the performance of his or her duties in the enforcement of the Act;
2. Failure to make, keep, and preserve any records as required under the provisions of the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq.;
3. Falsifying any such record, or refusing to make any such record accessible to the Commissioner upon demand;
4. Refusing to furnish a sworn statement of such records or any other information required for the enforcement of the Act to the Commissioner upon demand;
5. Paying or agreeing to pay wages at a rate less than the rate prescribed by the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq.; or
6. Otherwise violating any provision of the Act.

12:62-2.4 Denial, suspension or revocation of registration

(a) As an alternative to or in addition to sanctions provided in N.J.A.C. 12:62-2.5, a certificate of registration may be denied, suspended or revoked if the registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time:

1. Failed to comply with the registration requirement set forth in the Act;
2. Bid for or performed work pursuant to a public works contract without having fully complied with the registration requirement set forth in the Act;

3. Willfully made a misstatement of or omitted revealing a material fact or facts in the application for registration or renewal;
 4. Failed to provide all information requested by the Department pursuant to N.J.A.C. 12:62-2.1(c);
 5. Contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered or has utilized a subcontractor who has subcontracted his or her work to any subcontractor or independent contractor who is not so registered; or
 6. Failed to respond to a request to produce records, forms or documents or failed to cooperate or has interfered with a designee of the Commissioner in the course of a departmental investigation.
- (b) A certificate of registration may be denied, revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director, stockholder or agent of the applicant or registrant has at any time violated any provision of the Act or of this chapter, and/or any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects or has failed to comply with the labor laws of New Jersey or any other state or Federal labor law or any order of the Commissioner with regard to any matter not referred to in (a) above.
- (c) The registration of a contractor shall not be revoked or suspended for a period beyond five years. However, in determining the length of time for which a contractor's registration may be denied, suspended or revoked, the following criteria shall be considered:
1. The record of previous violations by the contractor of the Public Works Contractor Registration Act and/or the New Jersey Prevailing Wage Act and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects.
 2. Whether the general contractor or subcontractor in question should reasonably have known that a subcontractor with whom he or she is in privity had not registered, pursuant to the Act or had his or her registration revoked or suspended or had let his or her registration lapse;
 3. The total number of unregistered subcontractors at the work site(s) in question and the size and scope of public works project(s); and
 4. Whether the general contractor or subcontractor in privity to the subcontractor who is not registered pursuant to the Act obeyed the Department's directive to remove the unregistered subcontractor from the work site and thus cure the violation of the Act.
- (d) The Commissioner may require as a condition of initial or continued registration that a contractor who has violated either the Act or the Prevailing Wage Act must provide a surety bond payable to the State.
1. The surety bond shall be for the benefit of workers damaged by any failure of a contractor to pay wages or benefits pursuant to or otherwise comply with the provisions of the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq., or the Act.
 2. The surety bond shall be in the amount and form that the Commissioner deems necessary for the protection of the contractor's workers, but shall not exceed \$10,000 per worker.
 3. The surety bond shall be issued by a surety that meets the requirements of N.J.S.A. 2A:44-143.

12:62-2.5 Administrative penalties

Any or all of the administrative penalties set forth in N.J.A.C. 12:60-8.3 for violations of the "Prevailing Wage Act," N.J.S.A. 34:11-56.25 et seq., may also be imposed by the Commissioner or his or her designee upon a finding that a registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time committed any of the acts set forth at N.J.A.C. 12:62-2.4(a).

12:62-2.6 Appeals

- (a) Whenever the Department shall find cause to deny, suspend or revoke a certificate of registration, to require the posting of a surety bond pursuant to N.J.A.C. 12:62-2.4(d), or to impose an administrative penalty pursuant to N.J.A.C. 12:62-2.5, it shall notify the registrant or applicant of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (b) All requests for hearing shall be filed within 10 business days from the date of receipt of the notice. The Commissioner or his or her designee shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.
 - 1. All requests for hearing shall be in writing and shall be directed to the following address:

NJ Department of Labor and Workforce Development
Division of Wage and Hour Compliance
PO Box 389
3rd Floor
Trenton, NJ 08625-0389
- (c) In the absence of a timely request for a hearing, pursuant to (b) above, the determination of the Department shall be deemed the final administrative action in the given matter.
- (d) Where the Department has notified a registrant that it has found cause to deny, suspend or revoke its certificate of registration and where, further, that registrant has failed to request a hearing within the 10 day time limit prescribed in (b) above, the registrant shall, within 20 days of having received notice of the denial, revocation or suspension, surrender its certificate of registration by way of certified mail to the address listed at (b)1 above.
- (e) Any contractor who has his or her registration denied, suspended or revoked for violations enumerated in this subchapter shall not be permitted to perform work for which a bid has been submitted and which is under review.
- (f) Where a hearing with regard to a denial, suspension or revocation of a certificate of registration is requested and where, further, the Commissioner of Labor and Workforce Development ultimately determines that cause has been established to deny, suspend or revoke the certificate of registration, the registrant shall, within 10 days of receipt of the final order of the Commissioner or his or her designee, surrender the certificate of registration, by way of certified mail to the address listed at (b)1 above.
- (g) All requests for hearing shall be reviewed by the Division of Wage and Hour Compliance in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

CHAPTER 12B (DEPARTMENT OF LABOR CONTRACTOR DEBARMENT CASES)

SUBCHAPTER 1. APPLICABILITY

1:12B-1.1 Applicability

The rules in this chapter shall apply to contractor debarment cases transmitted by the Department of Labor pursuant to N.J.S.A. 34:11-56.37. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTERS 2 THROUGH 7. (RESERVED)

SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:12B-8.1 Agency filing with the Office of Administrative Law; settlement efforts

- (a) Upon receipt of an appeal of a debarment notice, the agency shall either immediately notify the Clerk of the Office of Administrative Law or, if the agency determines to retain the case under the provisions of N.J.S.A. 52:14F-8, notify all parties of the decision to retain. If the agency intends to transmit the case to the Office of Administrative Law, it shall forward to the Clerk, by facsimile transmission, two copies of the transmittal form, debarment notice and appeal.

- (b) Pending the commencement of the hearing, the agency may attempt settlement. However, the agency shall either transmit the contested case to the Office of Administrative Law immediately or commence a hearing with the timeframe of N.J.A.C. 1:12B-9.1(a).

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST

1:12B-9.1 Scheduling of proceedings

- (a) Upon transmittal of a debarment appeal, a plenary hearing shall be scheduled to commence five days following the appeal filing date as determined by N.J.A.C. 12:60-8.4(a)5.
- (b) The individual appealing the debarment may waive the right to a hearing scheduled pursuant to (a) above and may proceed with an accelerated proceeding pursuant to N.J.A.C. 1:1-9.4, provided, however, that the individual shall be debarred by the Department of Labor pending issuance of a final decision.

1:12B-9.2 Adjournments

Adjournments may be granted for extraordinary circumstances, provided, however, that if the adjournment is granted at the request of the individual appealing the debarment, the individual shall be debarred by the Department of Labor pending issuance of a final decision. The individual may apply to the Commissioner of the Department of Labor for a stay of the debarment pursuant to the emergency relief procedures set forth in N.J.A.C. 1:1-12.6.

SUBCHAPTER 10. DISCOVERY

1:12B-10.1 Discovery

- (a) The individual appealing the debarment shall be permitted to review the agency's entire file or files on the matter. Copies of any document in the file or files shall be provided to the individual upon the individual's request and for a reasonable copying charge as provided by N.J.S.A. 47:1A-2. The agency may refuse to disclose any document subject to a bona fide claim of privilege.
- (b) No other discovery shall be provided.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:12B-12.1 Motions

Other than motions for summary decision, a party shall not file a motion in advance of the scheduled hearing date.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:12B-13.1 Prehearing conferences

A prehearing conference may be scheduled in any proceeding conducted under this chapter, provided, however, that the time for commencing a hearing pursuant to N.J.A.C. 1:12B-9.1(a) shall not be extended.

SUBCHAPTER 14. CONDUCT OF CASES

1:12B-14.1 Conduct of hearing

Unless permitted by the judge, there shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other post-hearing submissions permitted after the final argument. If permitted, post-hearing submissions shall not extend the deadline for initial decision.

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

1:12B-18.1 Initial decision

- (a) An initial decision shall be issued in writing no later than 10 days from the conclusion of the hearing.
- (b) The initial decision shall include a caption; date record closed; appearances by the parties and representatives, if any; a brief statement of the case; a brief summary of findings of fact and conclusions of law and reasons therefor; and appropriate remedies.
- (c) The initial decision shall be provided immediately to the agency head and to the parties via facsimile or electronic transmission.

1:12B-18.2 Exceptions; replies

- (a) If a party wishes to take exception to the initial decision, such exceptions must be submitted in writing to the Commissioner of the Department of Labor, the judge, and to all parties. Exceptions must be received by the Department of Labor and the parties within three business days of issuance of the initial decision.
- (b) Replies or cross-exceptions must be received by the Department of Labor within one day of receipt of exceptions.

1:12B-18.3 Final decision

The Commissioner of the Department of Labor shall issue a final decision which shall adopt, reject or modify the initial decision no later than five days from the date of receipt of the initial decision.

1:12B-18.4 Extensions of time limits

Time limits for filing an initial decision, exceptions, and for issuing a final decision shall not be extended.